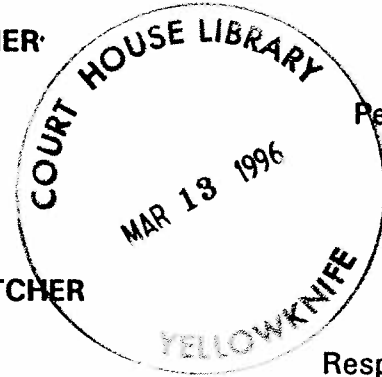


IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

KAREN ANNE FLETCHER



Petitioner

- and -

GLYNNE ANTHONY FLETCHER

Respondent

Direction sought on specific amount of child support grossed up for tax purposes.

REASONS FOR JUDGMENT OF THE HONOURABLE MR. JUSTICE J. Z. VERTES

Heard at Yellowknife, Northwest Territories
on December 11, 1995

Reasons filed: December 22, 1995

Counsel for the Petitioner: Elaine Keenan Bengts

Counsel for the Respondent: James R. Posynick

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

KAREN ANNE FLETCHER

Petitioner

- and -

GLYNNE ANTHONY FLETCHER

Respondent

REASONS FOR JUDGMENT

On October 31, 1995, I issued an order directing the respondent to pay child support in the sum of \$250.00 per month for each of two children. I further directed that the total support sum of \$500.00 per month is to be grossed up to account for the consequences of income tax (based on the petitioner's annual income of \$44,500.00) so as to provide the petitioner with \$500.00 after tax for the children's care. The parties now seek further direction as to the specific amount of the gross-up.

2 The practice has developed, due to the mandates of the *Divorce Act* and the guiding influence of such recent cases as Levesque v. Levesque, [1994] 8 W.W.R. 589 (Alta. C.A.), and, in this jurisdiction, Shuparski v. Mair, [1995] N.W.T.R. 4 (S.C.), of approaching child support issues as a mathematical exercise. Child care costs are estimated; they are apportioned between the parents in reference to their respective incomes; and then the apportionment is adjusted because of the effect of tax. This last step is usually accomplished by the use of computer programmes. The mathematics is

easy; the assumptions that go into these calculations, however, are not so amenable to mathematical precision.

3 In this case counsel have presented to me two different calculations for the grossed-up child support payment. They are each based on the same computer programme. Copies of the worksheets are attached to these reasons. They were attached as exhibits to the affidavit filed on this motion. The document marked Exhibit "B" is the calculation done for the petitioner. It shows the grossed-up figure to be \$801.84. The document marked Exhibit "C" is the calculation done for the respondent. It shows the grossed-up figure to be \$620.61. Which one is correct?

4 In arriving at the monthly net figure of \$500.00, I had already made certain discretionary adjustments based on the parties' relative financial circumstances. So I refrain from considering now whether the higher gross amount submitted to me would cause undue hardship to the respondent as opposed to the lower amount. There is no evidence one way or the other on that point. My sole concern is with the method of calculation.

5 The question is how to take into account the various benefits and liabilities imposed as a result of the vagaries of the Canadian tax system. Specifically, certain items — child tax credits, the equivalent to married income tax credit and deductions for day care expense (if any) — are generated solely from the fact that there are children. The general rule, as I understand it, has come to be that, just as child care costs are

apportioned between the parents, so should the benefits and liabilities arising from the tax system.

6 The same question as confronts me now was before Madam Justice Bielby of the Alberta Court of Queen's Bench in the case of Almeida v. Almeida (1995), 14 R.F.L. (4th)

88. She said (at pages 90 - 91):

The Supreme Court of Canada in *Willick v. Willick*, [1994] 3 S.C.R. 670 stated that in assessing a quantum of child support the court should [at pp.711 - 712]:

"...consider insofar as the evidence allows, other factors, including, *but not limited to*:

- (a) income tax implications of maintenance;...
- (b) income tax factors such as equivalent of married deduction, child tax credit, deductibility of child care costs;..."

However, that Court did not say how that consideration should be made, i.e. who should get the benefit of the deductions generated by these children, which I find are the child tax credit, the deductibility of child care expenses and the equivalent to married tax credit.

Neither party offered argument or authority to support their contrary positions on the treatment to be given to the tax credits and deductions in issue. They simply submitted tax opinions as to the gross figure resulting from the use of their interpretation.

However, one must obviously first determine the proper approach before considering the arithmetic to be relied on to achieve same.

The parents' personal tax credits, available to each of them independent of the existence of the children, do not play a role in this consideration; each retains the benefit of those credits.

If the custodial parent earned insufficient employment income to consume the entire benefit of the tax credits and deductions available to her because of the children, it would be appropriate to give the non-custodial parent the entire benefit of any which she did not consume before calculating any tax gross-up, even if that exceeded the portion he would otherwise be entitled to receive...

The policy of Parliament in creating the equivalent to married tax credit, given to a taxpayer who is a single parent raising one or more dependent children, would appear to be an acknowledgment of the reduced economies of scale available to a single parent over those available to a couple. However, that policy should not necessarily be interpreted to apply this tax credit solely to the benefit of the custodial parent. The net amount of child support payments is based on a finding as to her actual costs of

child-rearing; to assume she has additional costs because she is a single parent gives her double compensation for part of these expenses.

The proper approach is to divide the benefit of all of these tax credits and deductions between the parents to reflect the fact that each supports the children to a degree. The division should therefore reflect the proportion that each supports.

7 These comments are apt to the approach I must take on the question placed before
me.

8 I did not have the benefit of expert advice as to how to interpret the two
calculations presented by counsel. Counsel were given an opportunity to file further
information but were unable, or declined, to do so. I am not an accountant. Obviously
I am incapable of giving a learned explanation of the nuances of the two calculations. I
can, however, do what I am paid to do, that being to make a decision based on the
evidence before me.

9 When I compare the two calculations, it seems to me that Exhibit "C", the
respondent's worksheet, reveals a closer affinity with the general approach recommended
by Madam Justice Bielby. I note that there is a reference to the child tax benefit received,
something not referred to in the other worksheet. There is also a statement to the effect
that the calculation of after tax dollars does not include the child tax benefit. Finally, I
note that on Exhibit "B" there is a reference to "ignore the tax benefits to recipient" while
Exhibit "C" provides for an adjustment based on the difference between the tax benefits
and tax costs to the recipient. Hence I accept the gross-up calculations submitted by the
respondent.

I therefore direct that the gross monthly child support payment shall be in the sum of \$620.61.

11 If I am mistaken in my assumptions and my review of the calculations, then that can be corrected on a future variation application. In my original order I directed that the respondent periodically provide updated information on his financial status. If circumstances change and a variation application is brought, perhaps then more exact evidence can be provided as to the tax calculations.

12 There will be no order as to costs of this further application.



J. Z. Vertes
J.S.C.

Dated at Yellowknife, Northwest Territories
this 22nd day of December, 1995

Counsel for the Petitioner: Elaine Keenan Bengts

Counsel for the Respondent: James R. Posynick

THIS IS EXHIBIT D
 the Affidavit of
Elaine Keenan Bengts

ANALYSIS OF CHILD SUPPORT REQUIREMENTS

before me at the
 of Yellowknife
 the 25
 the 6 day of December
 SURNAMES
 PROVINCE
NT

FLETCHER VS FLETCHER

QUICK-CALCULATION WORKSHEET

GROSS INCOME
 SUBSISTENCE AMOUNT
 NON-DISCRETIONARY EXP
 DISCRETIONARY EXP

PAYOR		RECIPIENT	
FLETCHER AB		FLETCHER NT	
MONTHLY	ANNUAL	MONTHLY	ANNUAL
1853.71	22244.52>	3708.33	44500.00>
0.00	0.00	0.00	0.00
0.00	0.00>	0.00	0.00>
0.00	0.00>	0.00	0.00>
801.84	9622.04	801.84	9622.04
582.08	6984.90	500.00	6000.00
1512.29	18147.49	2897.60	34771.17
930.22	11162.59	3397.60	40771.17

GROSS SUPPORT AMOUNT
 AFTER TAX VALUE OF SUPPORT
 NET AFTER TAX DOLLARS
 AVAILABLE BEFORE SUPPORT
 NET AFTER TAX DOLLARS
 AVAILABLE AFTER SUPPORT

- "EQUIVALENT TO MARRIED" (EM) TAX CREDIT
- ▶ A) Recipient DOES receive the EM Tax Credit.
 - B) Recipient DOES NOT receive the EM Tax Credit.

NUMBER OF CHILDREN 2

	MONTHLY	ANNUAL
ESTIMATED RECIPIENT CHILD CARE COSTS	1805.00	21660.00
ESTIMATED PAYOR CHILD CARE COSTS	0.00	0.00
ESTIMATED TOTAL CHILD CARE COSTS	1805.00	21660.00
LEVESQUE CHILD CARE COST ESTIMATE	1835.47	22025.69
CHILD TAX BENEFIT RECEIVED	0.00	0.00 <ESTM>
SPOUSAL SUPP. PAID TO RECIPIENT BY PAYOR	0.00	0.00
DEDUCTIBLE PORTION OF DAY CARE	0.00	0.00

- ALLOCATION OF CHILD TAX BENEFIT
- ▶ A) Deduct Child Tax Benefit from the total child care expenses.
 - B) Include Child Tax Benefit with recipient's gross income.

- ALLOCATION OF "EQUIVALENT TO MARRIED" TAX CREDIT AND DEDUCTIBLE DAY CARE TAX CREDIT
- A) Deduct these benefits from the child care expenses before determining each parent's proportionate contribution to net child expenses.
 - B) Adjust payor's portion of child care expenses by net difference of tax benefits and tax costs to the recipient.
 - ▶ C) Increase payor's portion of the child care expenses by an amount equal to tax cost to recipient. (Ignore the tax benefits to recipient)

THIS IS EXHIBIT 1
 the Affidavit of

Maime Keenan Beagts

ANALYSIS OF CHILD SUPPORT REQUIREMENTS

born before me at the
 of Yellowknife
NWT

FLETCHER VS BREWSTER

QUICK-CALCULATION WORKSHEET

the 6th day of December
 1995
 SURNAME
 PROVINCE
MT Beagts

PAYOR		RECIPIENT	
FLETCHER AB		BREWSTER NT	
MONTHLY	ANNUAL	MONTHLY	ANNUAL
1853.71	22244.52>	3708.33	44499.96>
0.00	0.00	0.00	0.00
0.00	0.00>	0.00	0.00>
0.00	0.00>	0.00	0.00>
620.61	7447.28	620.61	7447.28
454.96	5459.57	500.00	6000.00
1512.29	18147.49	2784.80	33417.54
1057.33	12687.92	3284.80	39417.54

GROSS INCOME
 SUBSISTENCE AMOUNT
 NON-DISCRETIONARY EXPES.
 DISCRETIONARY EXPES.
 MY COMMISSION EXP
 OCT 1997

GROSS SUPPORT AMOUNT
 AFTER TAX VALUE OF SUPPORT
 AFTER TAX DOLLARS (NET OF
 DEDUCTIONS) AVAILABLE
 BEFORE SUPPORT
 AFTER TAX DOLLARS (NET OF
 DEDUCTIONS) AVAILABLE
 AFTER SUPPORT

* "AFTER TAX DOLLARS (NET OF DEDUCTIONS) AVAILABLE BEFORE (AFTER) SUPPORT"
 (RECIPIENT ONLY) DOES NOT INCLUDE THE \$ 840.00 CHILD TAX BENEFIT.
 "EQUIVALENT TO MARRIED" (EM) TAX CREDIT
 A) Recipient DOES receive the EM Tax Credit.
 B) Recipient DOES NOT receive the EM Tax Credit.

NUMBER OF CHILDREN 0

	MONTHLY	ANNUAL
ESTIMATED RECIPIENT CHILD CARE COSTS	1805.00	21660.00
ESTIMATED PAYOR CHILD CARE COSTS	0.00	0.00
ESTIMATED TOTAL CHILD CARE COSTS	1805.00	21660.00
LEVESQUE CHILD CARE COST ESTIMATE	0.00	0.00
CHILD TAX BENEFIT RECEIVED	70.00	840.00 <ESTM>
SPOUSAL SUPP. PAID TO RECIPIENT BY PAYOR	0.00	0.00
DEDUCTIBLE PORTION OF DAY CARE	0.00	0.00

ALLOCATION OF CHILD TAX BENEFIT
 ▶ A) Deduct Child Tax Benefit from the total child care expenses.
 B) Include Child Tax Benefit with recipient's gross income.

ALLOCATION OF "EQUIVALENT TO MARRIED" TAX CREDIT AND
 DEDUCTIBLE DAY CARE TAX CREDIT
 A) Deduct these benefits from the child care expenses before determining
 each parent's proportionate contribution to net child expenses.
 ▶ B) Adjust payor's portion of child care expenses by net difference of
 tax benefits and tax costs to the recipient.

Prepared for JAMES POSYNIK on Support.Works v 2.0(DEMO)
 prepared using 1994 tax tables

6101-01865

**IN THE SUPREME COURT OF THE
NORTHWEST TERRITORIES**

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Petitioner

- and -

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Respondent

**Reasons for Judgment of the
Honourable Mr. Justice J. Z. Vertes**

